

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS SCHROPP,

Defendant.

8:12CR300

MEMORANDUM AND ORDER

This matter is before the court on defendant's motion to vacate pursuant to [28 U.S.C. § 2255](#). [Filing No. 162](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). "The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. *Id.*

A jury convicted defendant for a violation of [18 U.S.C. § 844\(i\)](#) (arson), and [18 U.S.C. § 1341](#) (mail fraud), [18 U.S.C. § 1343](#) (three counts of wire fraud and aiding and abetting), and [18 U.S.C. § 844\(h\)](#) (use of fire to commit the felony). [Filing No. 93](#). Judgment in this case was handed down on May 14, 2015. [Filing No. 124](#). Defendant appealed to the Eighth Circuit, and the judgment was affirmed. [Filing No. 160](#). The defendant then filed this § 2255 petition. [Filing No. 162](#).

Defendant contends that his attorney rendered deficient performance for failing to raise a timely double jeopardy claim before trial under [Fed. R. Crim. P. 12](#) and by failing to request a special verdict on this issue. Defendant also argues that the court committed error by creating a dichotomy between the oral and written pronouncement of sentence, and counsel was deficient in not raising this issue.

On initial review, the court finds that “it does not plainly appear that the defendant is entitled to no relief,” and that the government should be required to answer. On receipt of the government’s answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant’s claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant’s Section 2255 motion within 21 days of the date of this Order.

Dated this 17th day of January, 2018.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge